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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,800	03/30/2005	David C Racenet	2863(203-3511)	5353

7590 10/31/2006
Paul R Audet
Senior Patent & Trademark Counsel
US Surgical a division of Tyco Healthcare Group
150 Glover Avenue
Norwalk, CT 06856

EXAMINER

LOPEZ, MICHELLE

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 10/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/529,800	Applicant(s) RACENET, DAVID C	
	Examiner Michelle Lopez	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/09/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to the amendment filed on 8/16/06.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 37 recites the limitations in “the center rod” and “the coaxial cable”. There is insufficient antecedent basis for these limitations in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 26-27, 34-37, 42-43, 45-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Fontayne 5,485,952.

Fontayne discloses a tool assembly comprising an anvil and a cartridge assembly, the cartridge assembly having a plurality of fasteners and being movable in relation to the anvil between a spaced position and an approximated position, the cartridge assembly and the anvil defining a tissue gap in the approximated position, a clamp member positioned adjacent a proximal end of the cartridge assembly and the anvil and being movable from a first position to a

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second position to maintain the proximal end of the cartridge assembly and the anvil proximate to each other, and a dynamic clamping member movably positioned in relation to the anvil and the cartridge assembly (claim 26); a drive member 266 operably connected to the clamp member and the dynamic clamping member, the drive member being formed from a flexible cable and being movable to move the clamp member and the dynamic the dynamic clamping member between their first and second positions (claim 27); wherein the tool assembly is pivotally secured to a body portion 12 of a stapling device (claim 34); wherein the tool assembly is operably connected to a collar member 154 and the collar member is pivotally secured to the body portion of the stapling device (claim 35); wherein the tool assembly is rotatably mounted to the collar member as shown in Fig. 8 (claim 36); wherein the dynamic clamping member is supported in the tool assembly (claim 37); a knife blade 265 formed on the dynamic clamping member (claims 42-43); wherein the first position of the dynamic clamping member is adjacent a proximal end of the tool assembly and the second position of the dynamic clamping member is adjacent a distal end of the tool assembly (claim 45); a sled 276 and at least one pusher 304, the sled being driven by the dynamic clamping member as shown in Fig. 4 (claim 46); and a plurality of staples and pushers as shown in Fig. 4 (claim 47).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28-33, 40-41, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fontayne 5,485,952 in view Bolanos (5,690,269).

Fontayne discloses the invention substantially as claimed including a flexible drive member as a center rod 155, but does not disclose wherein the drive member is a coaxial drive cable including an outer sheath and a center rod. Bolanos teaches the concept of a drive member having a coaxial drive cable with an outer sheath 200 and a center rod 70 for the purpose of properly articulating an endoscopic portion. It would have been obvious to one having ordinary skill in the art to have substituted Fontayne's drive member as by a coaxial drive cable as taught by Bolanos to articulate the tool assembly.

Bolanos also teaches wherein the center rod 70 is movable and axially movable with respect to the outer sheath (claims 29-30).

With respect to claim 31, it is deemed that Bolanos' center rod 70 is rotatable in relation to the outer sheath as shown in Fig. 8.

With respect to claim 32, Bolanos also shows wherein the outer sheath 200 is operably connected to a clamp member as shown in Fig. 12.

With respect to claim 33, Bolanos also shows wherein the center rod 70 is operably connected to a dynamic clamping member 136.

With respect to claims 40-41, Fontayne as modified by Bolanos does not specifically disclose wherein the center rod is formed from wound flexible cable and that the outer sheath is selected from the group consisting of steel mesh, plastic, nitinol, and Kevlar. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided a wound flexible cable and an outer sheath as claimed, since it has been held to be

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within the general skill in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice.

With respect to claim 44, Bolanos also shows a drive collar wherein the outer sheath 200 is fixedly attached to a drive collar as shown in Figs. 12-13 (claim 44).

Claims 38-39 and 48-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fontayne 5,485,952 in view of Milliman 6,669,073.

Fontayne discloses the invention substantially as claimed including a tool assembly having an anvil, a cartridge assembly, a clamp member, a dynamic clamping member having a lower flange portion 289 positioned to engage a surface of a cartridge assembly, but does not specifically disclose a first/upper flange portion positioned to engage a surface of an anvil. Milliman shows a surgical stapling apparatus comprising a tool assembly with an anvil assembly 20 and a cartridge assembly 18, and a dynamic clamping member having a first portion which engage the anvil assembly and a second flange portion which engage the cartridge assembly for the purpose of defining a maximum tissue gap between the anvil and the cartridge during movement of the dynamic clamping member. It would have been obvious to one having ordinary skill in the art to have modified Fontayne dynamic clamping member by having first and second flange portions as taught by Milliman in order to define a maximum tissue gap between the anvil and the cartridge during movement of the dynamic clamping member.

With respect to claim 39, Fontayne also discloses wherein the clamp member is annular and is positioned about a proximal end of the anvil and of the cartridge assembly in its second position.

With respect to claim 48, Milliman also shows wherein the lower flange portion of the dynamic clamping member has a rounded cross-section 287 along an axis traverse to a longitudinal axis of the cartridge assembly as shown in Figs. 24 and 45.

With respect to claims 49-52, Fontayne also discloses a knife blade 265 (claims 49-50); a sled 276 and at least one pusher 304 (claim 51); a plurality of staples and pushers (claim 52).

With respect to claims 53-54, Milliman also shows wherein the upper and lower flange portions are substantially vertically aligned and a knife blade disposed on a central body portion between the upper and the lower flange portions as shown in Fig. 45.

Response to Arguments

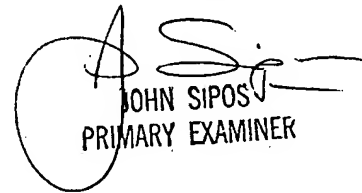
Applicant's arguments with respect to the rejection(s) based on Milliman have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Fontayne.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 571-272-4464. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ML


JOHN SIPOS
PRIMARY EXAMINER